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PUBLIC ETHICS



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Comments on Jonathan Wolff's Approach
to Philosophy and Public Policy

BY

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What can philosophy tell us about ethics and public policy? What can the ethics of public policy tell us about philosophy? Those are the questions that Jonathan Wolff addresses in his wonderful little book.¹ At one level, of course, the answer is straightforward—ethics is a branch of philosophy, so philosophy can tell us about the ethics of public policy, understood as a matter of deciding ‘what we should do’ in a manner that is institutionalised and collectively binding. But at another level, as Wolff shows, there is something deeply puzzling about the idea that philosophy can tell us anything very useful about public policy and about the ethical dilemmas that it raises. Those dilemmas arise as a result of political constraints, struggles and resources which generally have little to do with philosophy and, for the most part, rather little to do with ethics. In fact, as Wolff shows, philosophers have as much to learn about ethics and public policy as other people. What they have to offer in return is less some nugget of pure gold, to be offered to a grateful public eager for enlightenment, than a few useful distinctions, qualifications and questions (201) which might help intelligent, conscientious, public-spirited people to decide some tricky, but usually unglamorous, questions of policy. And that, basically, is what is so appealing about Wolff's book: that it departs so

¹ Jonathan Wolff, *Ethics and Public Policy: A Philosophical Inquiry*, (London: Routledge, 2011). Page numbers in the text are to this book.

strongly from what we might call ‘the philosopher as mouth of God’ approach to ethics, and situates itself in a variety of committee rooms, where tables are stacked with reports and statistics, enlivened only by the odd foray for investigative visits to a laboratory that does experiments on animals.

As Wolff shows, the difficulty with the ‘philosopher as mouth of God’ approach to ethics and public policy is less that God is dead—if s/he is—but that however true, elegant and persuasive our philosophical theories, they have to be implemented in a world where truth, elegance and philosophical persuasion are not the most important values. Wolff’s aim, therefore, is not to present a general theory about how philosophers should approach public policy, still less to present a previously-worked out theory about ethics for application in particular cases. Rather, his book seeks to give us a sense of what it is like to think about giving advice on public policy to others who will bear the responsibility for carrying it out; and to help us to see both the interest and appeal, but also the very real limits, of that role.

Wolff is a distinguished political philosopher, with long experience as a teacher of political philosophy, as well as a researcher, seeking to push the boundaries of his field. So, while Wolff makes it clear that his approach to ethics and public policy is ‘bottom up,’ rather than “top down,” (9), in many ways Wolff’s approach in this book is a development of themes and concerns which can be found in his previously published work.

In *Disadvantage*² Wolff suggests an alternative to two standard ways of thinking about political morality—the one, which would reduce it to a matter of cost-benefit analysis; the other which turns every question of political morality into a problem of

² Jonathan Wolff and Avner de-Shalit, *Disadvantage* (Oxford: Oxford University Press, 2007).

justice. In their place, Wolff asks us to take seriously the needs of those who are disadvantaged in our society, and the difficulty of determining the nature, severity and remedies for their situation, whether or not meeting those needs is economically efficient, or required by our favoured principles of justice. It is not that we should be indifferent to questions of economic efficiency, according to Wolff, nor to questions of justice. Resources are scarce and it is wrong to waste them. But, for Wolff, cost-benefit-analysis is not the right way to think about the ethical use of scarce resources, because there is no universal metric we can use to measure and compare the costs and benefits of different policy proposals, or even different states of affairs. (89-107) How bad it is to be a drug-addict rather than homeless, or to be paraplegic rather than hungry just isn't the sort of thing which we can answer by measuring amounts of badness, as though we were comparing quantities of water, or depths of colour in some scientific experiment. So cost benefit analysis—whether as practiced by economists or by utilitarians—is going to have only a subsidiary role, at best, in the ethical analysis of public policy.

Likewise, Wolff argues, it is a mistake to reduce questions of political morality to questions of justice, even when we are concerned with the plight of people whose situation may reflect individual or social injustice. Even if people are poor, hungry, homeless, addicted or injured because of their own foolish or self-destructive behaviour, Wolff argues, we should be morally concerned about their plight. Duties of justice are certainly important—the minimum that we owe others—though that minimum, unfortunately, is often so demanding that we are unable to meet it individually or collectively. But for Wolff, we have duties to each other which are not simply duties of justice—duties of compassion, consideration, decency, humanity, respect and solidarity. There are many different ways that we might describe such duties, but their point is that these are things we

owe to each other whether or not our society is just. As Wolff and de-Shalit put it, à propos those homeless and sleeping rough on our streets:

Perhaps when this phenomenon started people were genuinely moved. But it seems fair to say that Western societies are becoming apathetic....But we should not allow ourselves to get used to it. In other words, we want to claim, the state of the least advantaged is a mark of shame and speaks poorly of Western societies. It should be a call to action not only because some people get or own less than others, but also because it implies that social relations have deteriorated to an inhuman state (pp. 7-8).

Wolff's adoption of a 'bottom up' approach to ethics, then, does not mean that we can do without theory, or that we must be radically particularist as philosophers. The point, rather, is that issues of ethics and public policy are not reducible to questions of justice. And so, when we are concerned to know what types of animal experimentation, if any, should be legally tolerated, or what forms of gambling, if any, should be legal, we need to know what injustices follow from actual policy and are likely to occur with the main policy alternatives to the status quo. But we *also* need to consider the range of moral and political ideals in our society, and to consider how, if at all, they bear on the presentation and evaluation of the main policy alternatives. As this range is only partly a matter of philosophy—being influenced also by tradition, by chance, by struggle and by the unintended outcomes of past events and choices—philosophers need to ask themselves how best they should approach the constraints and opportunities created by the circumstances within which their advice has been sought, and for which it is supposed to work. Precisely because this latter topic has received so little attention from philosophers, we are especially lucky to have Wolff's reflections on this matter, presented with his customary clarity, modesty and humour.

Wolff's conclusions can be briefly summarised. Philosophers must be prepared to get their hands dirty, by studying the policy area in question, in order to understand why there is an ethical problem that needs resolution, to understand what remedies for resolving it have been tried, as well as to understand the constraints on any possible solution (81-82, 196-7). This is all hard work, and the results can be disappointing. "Most members of the British public seem happier with a policy that legalizes alcohol but not ecstasy, inconsistent though it seems, than they would be with a consistent policy that treats them both in the same way. To the philosophical mind, this is infuriating, but it is the everyday world of public policy" (198). Philosophers must therefore learn to accept that the test for good law and policy is not the same as the test for a good philosophical argument, because consistency in policy is a matter of psychology and institutional design—whether people can actually do the different things that laws require of them without generating counterproductive consequences—and not a matter of what people can believe without logical contradiction. (82, 200)

Moreover, "policy failure is always a threat," because policies often have unanticipated consequences. "One reason for this can be that policies are advanced on the basis of insufficiently examined empirical assumptions," and because policies often depend on false assumptions about human motivation and, particularly, about the enforceability and effectiveness of legal regulation (199-100). Attention to the nature and quality of the examples used to illustrate and test competing policy positions is therefore essential to the ethical quality of public policy, and is one area in which the traditional skills of philosophers can be used effectively to improve public policy (102-108). Because the world is an unpredictable place, "if an argument is to be based on empirical premises, speculation may well run ahead of evidence [...] Empirical claims need empirical support, not the support of

common sense, however common and however sensible it may seem” (60). Above all, it is important to realise that while we can be moved by moral arguments to question our behaviour and to feel guilty about it, getting people to change their behaviour is a more complex matter and, generally, requires structural change of a rather concrete (and often expensive) kind (201). “Many people would like to drive less, but they will not do so unless there are safe cycle routes or reliable and quick forms of public transport. Progress in this area, as in so many others, requires social and material change to accompany moral argument.”

I am sympathetic to all of these claims and, particularly, to the importance of trying to understand the historical background against which a particular problem of public policy occurs. Partly what is at issue, here, is our response to the threat of “false necessity,” as Roberto Unger calls it;³ but what is partly at issue is our understanding of the stakes in a particular policy. Attention to the circumstances of past choices, the reasons for which they were made, and the differences between expected and actual results are an indispensable antidote to mistaken, and often, self-serving, claims of necessity. However, they also highlight the importance of attending to what people say they need and want, even if people can be mistaken about what these are, or about their moral and political weight.

Wolff’s discussion of the limitations of philosophical approaches to disability, which conceives it as an issue of distributive justice, illustrates the importance of listening to what people say they want. Conceptualising the claims of the disabled through the lens of distributive justice alone makes it seem as though we are morally obligated to compensate people for those forms of disability which we cannot remove. But this is to

³ Roberto Mangabeiro Unger, *False Necessity: Anti-Necessitarian Social Theory in the Service of Radical Democracy* (Cambridge: Cambridge University Press, 1987).

misunderstand what disabled people want policy change to do for them, as well as how it might do it. Their demands of public policy are not that they be able to do all the things that they would be able to do if they did not have the disabilities they have, or to be compensated for the differences in their life chances, but that they not be treated worse than other people, that the world should not be *especially* unjust to them. (154, emphasis in the text). Wheel-chair friendly environments, for example, do not erase the real and significant differences between needing and not needing a wheel-chair. But they do mean that wheel-chair users are not excluded from activities that they would otherwise enjoy, from which they might benefit and to which they have much to contribute, because we wrongly assume that justice for the disabled is primarily about the distribution of special resources, or of ‘fixing’ those who are disabled, instead of removing handicaps created by familiar ways of thinking and behaving.

Still, there a couple of gaps in Wolff’s approach to ethics and public policy which I hope he will fill in a sequel to this book. The first concerns his relative indifference to questions of process and procedure, even though he urges philosophers to be more attentive than they generally are to what is involved in changing the world (192). The second concerns problems of evidence and how we should handle them. The two issues are partly connected, in so far as the ways we approach problems, and the people who are involved, can create, or alleviate, informational problems—as Wolff recognises when highlighting the significant contributions that disabled activists have played in changing the terms of debate on mental and physical disability. But procedural and evidential issues are not identical and it helps to approach them separately.

Most of us will not be asked to participate on committees designed to formulate or alter public policy and one’s primary concern, if asked to do so, is to address the substantive problem

on which one has been consulted. Reflections on political or administrative procedure may look like a distraction from this task. Just as it would be a mistake to confuse what is good policy in an ideal world from what is good policy right here and now, so it would be a mistake to confuse idealised forms of procedure with those which are possible here and now. Still, it is striking that Wolff has nothing to say about the latter, and its potential relevance to the former, or any advice to give philosophers about how they should think about the procedural aspects of public policy making. In part because Wolff's presentation of the issues starts once he is on the committee, or in the room, questions about the differences between the ideal and the 'realistically utopian' aspects of process and procedure do not appear. And yet who is asked to participate on a decision can matter to the decisions that are made, and how decisions are presented and how much time there is for discussion, also matter to outcomes. The questions here are not just 'who should be consulted?' or how far, as an advisor, one is free to bring up such issues. In addition, there is the question of how far transparency about selection procedures and the reasons they were adopted (because they are desirable, or a compromise, or a matter of habit) affects the freedom of advisors and, thereby, the decisions that they reach.

Take, for example, the Citizens Council, which forms a part of the process by which the National Institute for Health and Clinical Excellence (NICE) reaches its decisions about what forms of medical care ought to be available on the National Health Service in the United Kingdom.⁴ The Citizens Council is

⁴ The following paragraphs are based on P. Littejohns and M. Rawlins (eds.), *Patients, the Public and Priorities in Health Care* (Oxford: Radcliffe Publishing, 2009) and on my "Democracy, Deliberation and Public Service Reform," in Henry Kippin, Gerry Stoker and Simon Griffiths (eds.), *Public Services: A New*

deliberately selected in order to provide a microcosm of citizens with no special knowledge or experience of the NHS. Every effort is made to make sure that financial concerns, caring responsibilities, disability or distance do not prevent people from volunteering or participating; and to ensure that discussion is not dominated by a few members. But it seems likely that members of the Council are not informed about the efforts that have been made to ensure that they are a more descriptively representative body than is typical of most advisory or decision-making bodies, nor does it seem likely that they are told why such descriptive representation might matter to their advisory role, or to the advice that they are asked to provide. As a result, both their report on age as a factor in the distribution of healthcare resources and their report on inequalities in healthcare were marred by a simplistic equation of equality with ‘identical treatment.’ Thus, the view that ‘positive discrimination [is still discrimination]’ led the Council to reject preferential spending on children rather than the elderly, and to reject efforts to target health care resources in order to minimise the very significant effects of social inequality on life expectancy, general health and access to healthcare in the UK.⁵

Reform Agenda (London: Bloomsbury Academic Press, 2013), ch. 6 pp. 91 -106; also available at

http://clients.squareeye.net/uploads/2020/documents/0921TWE_ESRC_democracy_050730%20C.pdf

⁵ See Brian Brown, “The View of a Council Member,” P. Littejohns and M. Rawlins (eds.), *Patients, the Public and Priorities in Health Care*, pp. 125-8, 128. He is reporting not only his own view of equality, but that of all but three of the thirty Council members. The problem, of course, is that if you define ‘positive discrimination’ as intrinsically bad, you still have to show that differential distributions of resources are an example of positive discrimination so understood, rather than, say, a positive attempt to maximize the impact of scarce resources, or a remedial attempt to mitigate unfairness.

Of course, if part of the problem here is an inadequate conception of equality, it could be addressed by ensuring that the expert advice to which members of the Council listen, prior to their deliberations, includes advice on the different ways that key concepts like freedom, equality and rights can be understood. But what is striking in this example is that a bunch of intelligent, thoughtful people were not aware of the limitations of this way of thinking about equality as a result of their discussions. One of the findings of an ethnographic study of Council members, commissioned by NICE, was that “A Lack of clarity about the grounds on which citizens could legitimately speak, and pressures to not generate conflict, meant that while differences of class, ethnicity, gender, disability and age were visible to all, these identities were not [...] explored.”⁶ That makes me wonder whether those reports would have been the same had Council members been aware of the reasons why NICE thought it so important for the Council to be a descriptively representative body. I would therefore have been interested to hear what ideas, if any, Wolff had about the relationship between procedure and outcome in the ethics of policymaking, and how far he thinks that philosophers have anything useful to contribute as advisors by standing back from questions of substance in order to consider the ethics of procedure.

The second issue on which I would have liked more discussion concerns the ethical issues raised by the politics of knowledge and information. As Fenton, Brice and Chalmers note, patients’ and clinicians’ priorities for research very rarely match those of researchers. Whereas the former frequently want to know about the likely results of physical therapy or surgery,

⁶ See C. Davies, M. Wetherell and E. Barnett, “A Citizens Council in the Making: Dilemmas for Citizens and their Hosts,” P. Littejohns and M. Rawlins (eds.), *Patients, the Public and Priorities in Health Care*, 129 -138, p. 133.

researchers overwhelmingly study the effects of drugs, and pay little attention to patient interests in access to good information on how to cope with chronic or disabling conditions. But “in a research world where perverse incentives often determine what research will be done” it is unclear how “the information needs of patients and clinicians can achieve more prominence.”⁷

What counts as knowledge is not wholly independent of politics, and whether they are philosophers or policy makers, people are rarely in a position to evaluate the quality of the evidence with which they must work. How then should we handle competing evidence if we are concerned with the ethics of policy, and how far may we solicit additional information from people we trust?

Until recently, the gold standard for clinical trials of new medicine was what is called the ‘double-blind trial,’ on which doctors and scientists are as ignorant as patients about who is receiving the treatment to be tested and who is receiving a placebo.⁸ But what it takes to make sure that the only difference between two groups of people are the differences between a medicine and a placebo means that these sorts of studies are generally of very short duration, and are only done on a very

⁷ M. Fenton, A. Brice and I. Chalmers, “Harvesting and Publishing Patients’ Unanswered Questions about the Effects of Treatment,” in P. Littejohns and M. Rawlins (eds.), *Patients, the Public and Priorities in Health Care*, 165-180, 166-9.

⁸ The following paragraphs are based on John Worrall’s “Why There’s no Cause to Randomize,” *British Journal of Philosophy of Science* 58.3 (2007), 451-488, his “Evidence in Medicine and Evidence-Based Medicine,” in *Philosophy of Compass* (2007) and “What Evidence in Evidence-Based Medicine,” *Philosophy of Science* (Sept. 2002). See also Sir Michael Rawlin’s *Harveian Oration to the Royal College of Physicians*, October 2008, which can be found at <http://www.rcplondon.ac.uk/pubs/contents/304df931-2ddc-4a54-894e-e0cdb03e84a5.pdf>. Sir Michael was Chairman of NICE from its foundation in 1999 until 2012.

special population—typically, relatively young men, who suffer from one disease, but with no complicating factors to distract. These highly artificial conditions have increasingly come to seem an epistemologically unreliable source of knowledge about how a drug will behave when prescribed for people who do not fit such narrow criteria and circumstances. Not all forms of useful medical treatment can be subject to double-blind trials and, as Wolff notes, some of the best forms of health-care and maintenance are not specifically medical at all—things such as clean air, water, sanitary houses, safe workplaces, equality for women and efforts to combat the coercion and poverty which often blight their lives and the lives of their children and grandchildren (130). Thus, the idea that double-blind trials are the top of a pyramid of knowledge inevitably privileges some types of medical care and some types of health needs over others, for no good reason.

Abandoning the idea of a hierarchy of knowledge, however, highlights the difficulty of determining what weight to attach to different types of evidence—qualitative or quantitative—and what, if anything, one can or ought to do when faced with the potentially self-reinforcing links between power and knowledge. Wolff's book has little to say about the ethical significance of power differences for public policy and, unfortunately, offers little guidance when, as with issues of information and procedure, these differences of power frame public policy, rather than being its object more directly.

To see the point, let's return to the ecstasy/alcohol comparison. In the late nineteenth century the association of the brewing industry with the Conservative Party was well-established. Nowadays, representatives of the brewing industry probably give money to both political parties, and try to make it difficult for either one of them to oppose the damage caused by

alcohol in our societies. As with the National Rifle Association, which has successfully fought efforts seriously to limit legal access to guns in America, so every effort at treating alcohol as a dangerous drug is equated with Prohibition, with hostility to pleasure, and with a willingness to sacrifice the interests of the many because of the foolishness or bad luck of a few. If inconsistency in our policy preferences and ignorance about relevant information are not acts of nature, but the results of politics, what difference should this make to our search for common ground in the ethical formulation of policy?

Wolff's book is a welcome addition to the literature on method in political philosophy and to philosophy and public policy. I hope that there will soon be a sequel, in which Wolff extends his analysis of what, to paraphrase Rawls, we may call "the circumstances of policy,"⁹ in light of what happens before the philosopher enters the room.

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⁹ John Rawls refers to "the circumstances of justice" in *A Theory of Justice*, (Cambridge (MA): Harvard University Press 1971), Ch. 3, § 22, 109 -112.

If you need to cite this article, please use the following format:

Lever, Annabelle, "When the Philosopher Enters the Room. Comments on Jonathan Wolff's Approach to Philosophy and Public Policy," *Philosophy and Public Issues (New Series)*, Vol. 4, No. 3 (2014), 7-19, edited by S. Maffettone, G. Pellegrino and M. Bocchiola